

1909-010 Chancery Causes: J. F. W. # vs. W. T. Galloway & wife
Lee Co.

CA. Contract Dispute
T. Property

- Deed

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County.

Humbly complaining your orator, J. F. Witt, a citizen of Lee County, Virginia, respectfully represents unto your Honor that on the first day of June, 1906, he and his wife conveyed to W. T. Golloway and Armintia Golloway a certain tract or parcel of land, lying and being in Lee County, Virginia, in the Bill Hill Country in consideration of the sum of (\$1848.00) one thousand eight hundred and forty-eight dollars; (\$815.00) eight hundred and fifteen dollars thereof he paid in hand to ~~the~~ your orator, and the residue, that is the sum of (\$1033.00) one thousand and thirty-three dollars with interest thereon from the first day of January, 1906, to be paid by them to your orator five years after the first day of January, 1906; that your orator reserved in his said deed of conveyance a vendor's lien upon the land conveyed therein for said (\$1033.00) one thousand and thirty-three dollars and its interest ^{and} by the terms of said conveyance the said Golloway^s agreed and bound themselves to pay unto your orator the interest on said deferred payment annually, and that since the making of said conveyance the said Golloway's have paid on said deferred payment about the sum of (\$400.00) four hundred dollars on the _____, day of _____, 19____; and that the residue of said sum of money is yet owing unto your orator. A certified copy of which conveyance of your orator and his said wife to the said Golloway^s is herewith filed marked exhibit "A" and prayed to be taken as a part of this bill.

Your orator will further show unto your Honor that he is a merchant in this County, and the said W. T. Golloway previous to the 5th day of October, 1907, bought at his

store various goods, wares and merchandise and had his purchases charged to his account on your orator's books; that your orator on the first day of January, 1908, settled with the said W. T. Golloway and the said Golloway made, executed and delivered to your orator a certain promissory note on the first day of January, 1908, and payable one day after its date, for the sum of (\$393.58) three hundred and ninty-three dollars and fifty-eight cents; that said note was given to your orator for the goods, wares and merchandise bought from his store and in settlement thereof which sum of money and note is yet owing to your orator and remains unpaid.

Your orator will further show unto your Honor, and he charges and avers that the said W. T. Golloway on the 5th day of October, 1907, made and executed to his wife, the said Arminta Golloway a deed whereby he conveyed to his said wife all his right, title and interest in and to the said tract of land mentioned and described in said exhibit "A" and that the same is recorded in the Clerk's Office for Lee County, on the 16th day of October, 1907, in deed book number 46, page 297; a certified copy of which last mentioned deed is herewith filed, marked exhibit "B" and prayed to be taken as a part of this Bill.

Your orator avers and charges that the said last mentioned deed was not made to the said Arminta Golloway upon a consideration deemed valuable ~~by~~ in law; but was executed by the said W. T. Golloway to his said wife, Arminta Golloway *without a valuable consideration and* way with the intent to hinder, delay and defraud his creditors and especially your orator.

The premises aforesaid considered, your orator is advised that the said last mentioned deed of the said W. T. Golloway to his said wife, Arminta Golloway, is absolutely void and of no effect in so far as you orator's said debt of (\$393.58) three hundred and ninty-three dollars and

fifty-eight cents is concerned.

Your orator will further show unto your Honor that he had no actual knowledge or information of the fraudulent making of said deed by said W. T. Golloway to his said wife, Arminta Golloway, until a day or two ago. But he had heretofore instituted his action at law upon said note for (\$393.58) three hundred and ninty-three dollars and fifty-eight cents in the Circuit Court for Lee County, for the purpose of obtaining a judgment thereon against the said W. T. Golloway and had process in said action at law returnable to the ~~xxx~~ Second August Rules, 1908. Had you orator have known that the said W. T. Golloway had made said conveyance to his said wife, he would not have brought said action of law, but would have instead brought a suit in chancery for the purpose of annulling and setting aside said deed mentioned in said exhibit "B".

The premises aforesaid considered your orator is advised that he has rights that, however, are cognizable only in a Court of Chancery. His prayer therefore is, that your Honor take cognizance of his said cause of complaint; that the said W. T. Golloway and Arminta Golloway be made parties defendants to this bill; that they be required to answer the same, but not on oath as that is expressly waived; that upon a hearing of this cause the said deed, dated the 5th day of October, 1907, and mentioned ^{as aforesaid} ~~as~~ exhibit "B" be wholly vacated, annulled, avoided and set aside, and the land conveyed and described in said deed, or enough thereof to pay your orator his said debt be sold under a proper decree of your Honor's Court. And that all such other, further and general relief be awarded your orator that the nature of his cause may require and he will ever pray, etc.

Pennington Bros. P.Q.

J. F. Hitt

vs. } Bill

W. J. Galloway et al

Filed Aug. 29, 1908

Second October Rules 1908.

Spa. executed & D.N.

First Nov. Rules 1908.

D.N. confirmed &
cause set for hearing.

made
This deed, this the 1st day of June, 1906, by and between J. F. Witt and Dora H. Witt parties of the first part and W. T. Golloway and Armintha Golloway parties of the second part:

W I T N E S S E T H:

That for and in consideration of the sum of Eighteen Hundred and forty-eight (\$1848) dollars paid and to be paid as follows, to-wit: Eight Hundred and fifteen (\$815) dollars in hand paid the receipt of which is hereby acknowledged, and the residue thereof to be paid by the said second party to *and five years after the 1st day of January, 1906,* the said J. F. Witt with interest from the first day of January, 1906, the said parties of the first part do and each of them doth hereby give, grant, bargain and sell unto the said second parties in fee simple a certain tract or parcel of land lying and being in Lee County, Virginia, on the Big Hill country, and being a part of the same tract of land conveyed to said J. F. Witt by John J. Carter, by deed bearing date on the 28th day of November, 1902, and recorded in deed Book 39 page- 502 &c. and bounded as follows, to-wit: BEGINNING at a black oak on a ridge corner to Tobias Hughes land, thence up a ridge with a line of a tract formerly sold to James Day N. 27 1/2 W. 45 3/4 poles to a rock old original points corner; thence with a line of said Wynn heirs N. 58 E. 1460 feet to a black oak, sour-wood chestnut-oak and a dog-wood. N. 28-1/2 W. 1110 feet to a peach tree near the lane; thence S. 88-3/4 W. 476 feet to a stake about 10 feet on the west side of a hollow: S. 78 W. 518 feet to a stake at the corner of the ridge field, S. 41 W, 600 feet to three chestnut sprouts; S. 25-3/4 E. 146 feet to a stake; S. 2. W. 268 feet to a stake; S. 16-3/4 W. 271 feet to a cedar on the old original Hobbs line; thence with the same N. 44 W. 198 feet to a cucumber and a maple old original Hobbs corner; with old Hobbs line N. 15 W. 51 poles to a stake; N. 53 E. 34 poles to an oak bush; N. 68 E. 36 poles to a locust sprout from old stump; N. 2 W. 15 poles and 8 links to a large black oak (fallen); N. 49 E. 21-3/4 poles to a large white-oak, now down old marked Hobbs corner; N. 31-1/2 W. 26-1/2 poles to a poplar and cucumber stump; N. 76 E. 995 feet to a dogwood and a small sugar tree; thence with a conditioned line to the said J. F. Witt and Patton Slomp S. 34 E. 139 feet to a small poplar, locust and a hickory, S. 83 E. 166 feet to a dead black oak; N. 83-1/2 E. 320 feet to a small maple; S. 78-3/4 E. 132 feet to a *N. 74 E. 132 feet to a chestnut* stake; N. 43-1/2 E. 195 feet to a stake on the original Eastern boundary

line; thence with the same S. 1 W. 77-1/4 poles to a planted corner of E. P. Carters line thence with his line S. 1/2 W. 140 ples to two small bushes about 20 links below a large rock near Powells river; thence down said river S. 56 W. 40 ples to a cucumber stump on bank of Powells river; thence leaving ~~A~~ said river N. 4 E. 50 poles to a maple on the side of a hill, on old dower line, S. 48 W. 55 poles to ^a paw-paw above a spring in a hollow; S. 62-1/2 W. 56 poles to the BEGINNING, containing 117-1/2 acres more or less.

Together with all the appurtenances vunto said land belonging. To have and to hold the said tract or parcel of land with its appurtenances unto the said second parties ^{their heirs} and assigns, forever in fee-simple.

And the said parties of the first part covenant with the said parties of the second part that they have the lawful right to convey the ~~the~~ said tract of land; that the same is free from all encumbrances; and that the said second parties shall have quiet and peaceable possession thereof; and that the said first parties will warrant generally the title thereto.

And the said first parties reserve a vendors lien unto themselves their heirs and assigns upon the said tract of land to secure the payment of the said One Thousand and thirty-three (\$1033) dollars and its interest. And they the said second parties promise and bind themselves to pay the interest upon said sum of money annually, on the 1st day of Jan. next after the first day of January, 1906.

Witness the following signatures and seals.

J. F. Witt (Seal)

Dora H. Witt (Seal)

Virginia,

Lee County, to-wit:

I, A. K. McClure, a Notary Public, in and for the County of Lee, and State of Virginia, do hereby certify that J. F. Witt and Dora H. Witt, whose names are signed to the foregoing deed bearing date on the 1st day of June, 1906, have acknowledged the same before me in my county and State aforesaid. My commission expires on the 25 day of June 1908.

Given under my hand and seal this the sec-(2) ond day of June, 1906.

A. K. McClure N. P.

Virginia, Lee County, to-wit:

In the Clerk's office of Lee County, on this the 16th day of October, 1907, this deed was presented, and together with the certificate annexed, admitted to record.

Teste: H. C. T. Ewing, Clerk. By M. E.

Flanary, D. C.

AA Copy Teste: H. C. T. Ewing, Clerk.

(D. B. No. 46, page 294 &c.)

This DEED made this the 5th day of October, 1907, by W. T. Gollaway, party of the first part and *Araminta Gollaway, party of the second part and* both of Pennington Gap, Virginia:

W I T N E S S E T H:

That for and in consideration of \$1.00 in hand paid, the receipt of which is hereby acknowledged and for other good and sufficient reasons I. the said first party do hereby grant and convey unto the second party all my right, title and interest in and to a certain tract or parcel of land lying and being in Lee county Virginia on the Big Hill and being the same tract of land which was conveyed to the ^{said} first and second parties by J. F. Witt and Dora H. Witt on the 1st day of June, 1906, and acknowledged before A. K. McClure, N. P., and for a more accurate description of the same, reference is here made to said deed.

TO HAVE and to hold the same to the said first party, her heirs and assigns, forever.

Given under my hand and seal the date above written.

W. T. Gollaway (Seal)

State of Virginia,

County of Lee to-wit:

I, W. K. Hopkins, a commissioner in Chancery in and for the County and State aforesaid, do certify that W. T. Gollaway whose name is signed to the within writing bearing date on the 5th day of October, 1907, has acknowledged the same before me in my county aforesaid.

Given under my hand on this the 5th day of October, 1907.

W. K. Hopkins Commissioner in Chancery.

Virginia, Lee County, to-wit:

In the Clerk's office of Lee County, on this the 16th day October, 1907, this deed was presented, and together with the certificate annexed, admitted to record.

Teste: H. C. T. Ewing, Clerk.

By M. E. Flanary, D. C.

A Copy Teste: *H. C. T. Ewing*, Clerk.

To the Hon. H. A. W. Shreen, Judge
of the Circuit-Court for Lee Co. Va.

The joint and separate answer of
W. P. Galloway and Arminia Galloway,
to a Bill of Complaint-filed against
them in the Circuit-Court of Lee
County Virginia by J. H. Wilt.

For answer to said bill of Complaint;
or to so much thereof, as these respond-
ents are advised it is material for
them to answer, answering they say: -

(1) It is true that on or about the 12th
day of June 1906, the Complainant & wife
conveyed unto these respondents, the
land described in Exhibit "A" of said
bill and on the terms ^{and at the price} therein set forth.

It is also true that respondent W. P.
Galloway executed his note to said
Complainant - on 12th day of Jan. 1908,
payable one day after date for \$373.58.

It is also true that on the 5th day of
October, 1907, respondent ^{Arminia Galloway} executed to
respondent ^{Arminia Galloway} the deed a copy of which
is shown by exhibit "B" with Complainant's
bill of Complaint.

But it is not true "that" said last-
mentioned deed was not made to the

said Arminia Galloway upon a
consideration deemed valuable in law."
But upon the other hand the consideration
was of the most-valuable kind.

Every dollar paid to the said J. F.
Wilt for said tract of land was
the property ^{and money} of the said Arminia Galloway,
and the said W. T. Galloway never owned
one penny of the purchase money paid
for said land; but every dollar paid
thereon came from the sale of the said
Arminia Galloway's land in the State
of Kentucky; and every dollar of
the purchase money yet-unpaid
on said land will have to be paid
by the respondent Arminia Galloway
out of her separate estate. All
of which will be paid when due. The
said W. T. Galloway negotiated the note
for respondent Arminia Galloway, he
being her husband, and she
not knowing until long while after
the conveyance from Complainant
and wife for said land, was made
to respondents jointly, but thinking
the same belonged to her individually.
This respondents are informed and
so allege, that this made the said

W. T. Galloway, merely a trustee, for the said Arminia Galloway; and that the said W. T. Galloway, in making conveyance of Oct: 5, 1907, did only what a Court of equity would have compelled him to do.

Nor is it true that said conveyance of the 5th day of Oct: 1907, ^{executed} by W. T. Galloway ~~was~~ to his said wife Arminia Galloway ^{was made} with intent to hinder, delay and defraud his creditors, and especially Complainant.

But he merely did what in equity and good morals he should have done. And said respondents deny any fraud upon their part; or upon the part of either of them, actual or constructive.

And therefore they are advised that said Complainant has not right in law or equity to have said conveyance of Oct: 6, 1907, and which was admitted to record in the Clerk's office of Lee Co. Va. Oct: 16 1907, annulled and set aside, and said land, which of a right belongs to respondent Arminia Galloway, ^{sold} to pay the debts of respondent W. T. Galloway.

And now having fully answered all the allegations of said bill which they are advised it is material for them to answer; and denying all allegations

Not specifically admitted a need,
said respondents pray to be hence
dismissed with their reasonable
costs in this behalf expended, and
they will ever pray etc.

J. C. Noel, p.d.

J. H. Witt

vs } J. C. Cunningham

W. J. Cunningham et al.

Answer of W. J. Cunningham
et al.

Filed Dec 8. 1908.

H. C. J. Cunningham.

Chas.

===== #
J. F. Witt, Complainant, #

vs. #

Decree, Final. #

W. T. & Arminta Colloway, defendants. #
===== #

On the motion of the complainant in this cause it is
ordered to be stricken from the docket at the cost of the com-
plainant; but the Clerk in taxing the costs in this case will
not tax any attorney's fee to the defendants attorney.

J. F. Hitt

or { seen final

W. F. Holloway & Co.

Entered in C.O.B.
8, page 435

Enter this

Feb. 8 1909.

It was signed

J. F. Witt.....Complainant.

Vs. Decree.

W. T. & Armintia Golloway.....Defendants.

On the calling of this cause the defendant moved the court for leave to file their answer which was accordingly granted to them; and thereupon the plaintiff replied generally. And this cause is continued.

J. F. Witt

or } Deen
no. 1

N. J. Holloway et al

Entered in COB

8, page 421

Enter this

Dec. 11-1908

H. A. W. S. Lee

IN THE CIRCUIT COURT FOR LEE COUNTY.

=====#

J. F. Witt, Plaintiff, #

Lis Pendens.

vs. #

W. T. Golloway & Arminta Golloway, Deft. #

=====#

The general object of the foregoing suit^z which is now pending in the Circuit Court for Lee County, Virginia, under the style above given, is to have set aside and declared null and void a certain deed, alleged in the bill of said plaintiff to have been fraudentually made by the said W.T. Golloway to the said Arminta Golloway and to have the land and properties therein conveyed declared to be the property of the said W. T. Golloway, and to subject the estate of the said W. T. Golloway and Arminta Golloway bherein to the payment of the claims of the said plaintiff, which amounts to the sum of (\$393.58) three hundred and ninty-three dollars and fifty-eight cents, with interest thereon from the first day of January, 1908; and the sum of (\$633.00) six hundred and thirty-three dollars with interest thereon from the first day of January, 1906.

The deed sought to have set aside in the foregoing suit is the one made by the said W. T. Golloway on the 5th day of October, 1907, to his wife Arminta Golloway, and which deed is of record in the Clerk's Office for Lee County, Virginia, in deed book number 46, page 297; and for a description of the land, estate and property intended to be affected by the foregoing suit, reference is here made to said deed, recorded as aforesaid, and to the deed dated the first day of June, 1906, of J. F. Witt and wife to the said defendants, and which deed is of record in the Clerk's Office for Lee County, Virginia, in deed book number 46 page 294 and 295, and the names of the persons whose estate is intended to be affected

by the foregoing suit are the said W. T. Golloway and Arminta Golloway.

Witness my hand this the 28th day of August, 1908.

J. F. Witt.

Virginia,

Lee County, to-wit,

I, R. E. L. Chamberly a Notary Public,
in and for the County of Lee and State of Virginia, do hereby
certify that J. F. Witt, whose name is signed to the foregoing
writing, bearing date on the 28th day of August, 1908, has
acknowledged the same before me in my County aforesaid.

Given under my hand, this the 28, day of
August, 1908.

R. E. L. Chamberly, N. P.

my commission expires Oct. 27, 1911

Virginia, Lee County, to-wit:

In the Clerk's office of Lee County, on this the 29th day
of August, 1908, the foregoing Lis Pendens was presented, and to-
gether with the certificate annexed, admitted to record, at ⁸₁ o'clock
A. M.

Teste: H. C. J. Ewing, Clerk.

J. F. Witt
vs. } Sis Pendero

H. T. Galloway et al
Filed August 29, 1908,
at 8 o'clock A.M.,
H. T. Galloway,
Clerk.

Recorded in Deed
Book No. 47, page 344
re. Examined Aug 29,
1908. Indexed.

E.W.PENNINGTON.

ROBT.L.PENNINGTON.

Pennington Bros.
ATTORNEYS AT LAW,
JONESVILLE AND PENNINGTON GAP, VA.

Pennington Gap, Va., Aug., 28, 1908.

Mr. H. C. T. Ewing,
Jonesville, Va.,

Dear Sir:-

I herewith enclose you a bill in-chancery of J.
F. Witt against W. T. Golloway & Arminta Golloway; also a
Lis Pendens which please have recorded at once.

Make the following memorandum in this case:

" J. F. Witt, vs. W. T. Golloway & Arminta Golloway,
to the First October Rules, 1908."

Yours very truly,

E. W. Pennington.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

W. J. Galloway and Armin
W. J. Galloway

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on

the *3rd* Monday in *Oct.*, 190*8*, to answer a bill in chancery exhibited against *them*
by J. F. Witt

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *29th*

day of *Aug.*, 190*8*, and 1*33rd* year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing, Clerk.

, Clerk

J. F. Witt

VS

SUBPOENA
IN
CHANCERY

W. J. Galloway &
Armintha Galloway
Pen. Pro. p. q.

To

2nd October

Rules

Lee Circuit

Court

1908.
Executed by delivering
a Copy of the within
to W. J. Galloway
& wife (each) a copy.

This Oct 12th 1908.

J. Miles

Deputy Sheriff.

Executed on the 12th day of October
1908 by delivering two copies of the
within numerous to W. J. Galloway
and Armintha Galloway in person
Lee Lee, 1st 1st

Armintha Galloway
W. J. Galloway
J. S. Lee

J. F. Witt

vs } Rice In Lohan

W. T. Galloway et al